IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 824 OF 2006

Shri Kisan Shantaram Tambat ...Appellant
V/s.
Sou.Malati Dattatraya Narkar & Anr. ...Respondents

Mr.P.S. Dani for the Appellant.
None for the Respondents.

CORAM : V.M. KANADE, J.

DATED : JULY 11, 2007

P.C. :-

. Heard the learned Counsel for the appellant.

2. The appellant takes exception to the order passed by the Civil Judge, Junior Division, whereby the suit filed by the respondents was decreed and this order was confirmed in appeal by the District Judge, Raigad.

3. A suit was filed by the respondents-original plaintiffs seeking possession of the suit hut. In the plaint filed before the trial Court, it was averred that the suit hut was constructed by plaintiff no.2 and in the said hut, the plaintiff was carrying on business of utensils. It was pleaded in the plaint that the present

appellant-original defendant was appointed as a servant to look after the said business and that subsequently, thereafter, the defendant was permitted to stay in the said hut since he was evicted from his house which was done on humanitarian ground. It is averred that when possession was demanded from the appellant herein, he filed a suit under the Rent Act for claiming protection from eviction from the said property. The trial Court decreed the suit and came to the conclusion that the provisions of Section 13(1)(hhh) are applicable since the Gram Panchayat had issued the notice for demolition of the said premises and therefore, it came to the conclusion that the appellant herein was not entitled to protect his possession in the suit premises. The appellate court, however, after perusing the documentary evidence on record came to the conclusion that the status of the appellant herein was that of licensee and further held that he was working in the said manufacturing unit of the plaintiff as a servant. The Appellate Court, therefore, after appreciating the evidence on record accepted the plea raised by the plaintiff. It also observed that though the trial Court

had passed decree in favour of the plaintiff being impressed by the provisions of Section 13(1)(hhh) and the said exercise was unnecessary, however, it confirmed the finding in view of the discussion made by the Appellate Court.

4. The learned Counsel for the appellant submitted that the trial Court had committed an error of law and though no averments had been made in the plaint, held that the defendant-appellant herein was not entitled to protect the possession in view of Section 13(1)(hhh) of the Rent Act. He further submitted that the Appellate Court had erred in coming to the conclusion that the appellant was licensee only on the basis that the licence was thereafter transferred in the name of plaintiff no.2. He submitted that the appellate court ought to have remanded the matter to the trial court particularly when the trial court had passed the decree relying on the provisions of Rent Act which was never subject matter of the suit. He further submitted that the trial court after having come to the conclusion that the appellant was the licensee, this fact not being

challenged in the appeal whether the respondent was entitled to file the appeal.

5. I have heard the learned Counsel for the appellant. It is no doubt true that the trial Court had erred in coming to the conclusion that in view of provisions of Section 13(1)(hhh), the appellant herein was not entitled to get protection of his possession of the suit premises, however, this error has been corrected by the lower Appellate Court. The lower Appellate Court after having perused the oral and documentary evidence on record has recorded a finding of fact. The lower Appellate Court has observed that though initially the licence under the Shop Act was issued in the name of the appellant herein, subsequently, this licence was transferred by the appellant in favour of respondent no.2. It is also noticed that a notice had been issued under Section 53 of the MRTP Act. Further, it has also considered the documentary evidence on record that the plaintiff No.1 had filed an application dated 29.12.1995 and had discontinued the electric meter installed at that house.

The lower Appellate Court has also accepted the oral evidence of plaintiff no.1 that the plaintiff no.2 used to give work to the appellant herein. The lower Appellate Court has accepted the explanation given by the plaintiff after taking into consideration the facts and circumstances of the case. In the light of the findings recorded by the lower Appellate Court, therefore, it would not be possible to take a different view and interfere with the said finding of fact recorded by the lower Appellate Court. Under the circumstances, therefore, there is no merit in the submission made by the learned Counsel for the appellant.

. Second Appeal, therefore, is dismissed. Civil Application is also dismissed.

(V.M. KANADE, J.)